IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.Criminal Misc. Petition No. 249/2004

(Hanuman Singh Vs. Smt. Savitri)

Date of order : 11.07.2006

P R E S E N T

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Pradeep Shah for the petitioner.

BY THE COURT:

By the instant criminal misc. petition under Section 482 Cr.P.C., the petitioner has challenged the order dated 25.02.2004 passed by Additional Sessions Judge, Rajgarh (for short 'the revisional court' hereinafter), in Criminal Revision No.09/2003, whereby the revision petition filed by the petitioner against the order dated 24.1.2003 passed by Judicial Magistrate, Taranagar (for short 'the trial court' hereinafter) in Criminal Case No. 121/2001 was dismissed and the order granting maintenance in favour of the non-petitioner on her application u/s 125 Cr.P.C. at the rate of Rs.1200/- per month was affirmed.

I have heard learned counsel for the petitioner.

Perused the order of the revisional court as well as of the trial court and the record of the trial court.

It is contended by the learned counsel for the petitioner that the income of the petitioner is Rs. 1200/- per month and therefore, awarding maintenance @ Rs. 1200/- per month by the courts below is the abuse of the process of the Court.

On careful perusal of the record and the statements of witnesses, it appears that non-petitioner is legally wedded wife of the petitioner which the petitioner has not disputed and both the courts below concurrently concluded that the non-petitioner is legally wedded wife of the petitioner. From the evidence it has also been established that the petitioner has been serving at Darjeeling may be in private job. Both the courts below concluded that the petitioner failed to maintain the non-petitioner wife and neglected her. In reply to the application under Section 125 Cr.P.C., the petitioner alleged that the non-petitioner is leading an adulterous life and came with the allegation that she gave birth to a child namely Surendra who is not from his loin. However, it appears from the record that subsequently, Surendra expired and was not a party to the lis. The petitioner failed to establish the allegation levelled by him by

cogent and reliable evidence. From the statement of the petitioner before the trial court it is clear that after the marriage for about 5 to 6 years, the petitioner and non-petitioner lived together as husband and wife and discharged the matrimonial obligations, however, subsequently, the petitioner went to Darjeeling for service and therefore, he has been residing at Darjeeling. However, it is not the case of the petitioner that he has been permanently residing at Darjeeling. He has been visiting to his native place. So far as the income of the petitioner is concerned, the petitioner stated his income to be Rs. 1200/- per month, but the trial court and the revisional court did not rely on his statement and in my view rightly so. A person who went to such a distant place for service is earning only Rs.1200/- per month, is highly improbable. Whereas, the non-petitioner and her witness AW-2 Hanuman Singh stated that the petitioner is earning Rs. 15,000/- per month. This shows that the petitioner has not disclosed his true income.

Considering the statements of the parties, the trial court came to the conclusion that a sum of Rs.1200/- per month is just and proper amount for maintenance to maintain an adult person. The revisional court on reconsideration of the material before the trial court also concluded that the conclusion arrived at by the trial court is based on sound and proper appreciation of

the evidence. The courts below have neither ignored any evidence nor any material while considering the petition as also the revision. In the circumstances, therefore, it cannot be said that the order impugned would result in serious miscarriage of justice or manifest injustice or abuse of process of the Court.

No case for interference by invoking extra-ordinary jurisdiction under Section 482 Cr.P.C. is made out.

The misc. petition is accordingly dismissed. Stay petition also stands dismissed.

(H.R.PANWAR), J.

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